

**Before the
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED
APR - 7 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
of the Rules (Table of Allotments))
(Barnwell, SC; Pembroke, GA;)
Douglas, GA; Willacoochee, GA))

MM Docket No. 00-18
RM-9790

To: Chief, Allocations Branch, Policy and
Rules Division, Mass Media Bureau

**REPLY COMMENTS OF BULLIE BROADCASTING CORPORATION AND
OPPOSITION TO COUNTERPROPOSAL**

Bullie Broadcasting Corporation ("Bullie"), licensee of broadcast station WBAW-FM, Barnwell, South Carolina, and petitioner herein, through counsel and pursuant to Section 1.415 of the Rules, hereby files these Reply Comments in response to the Comments and Counterproposal filed March 23, 2000, by Multi-Service Corp. ("MSC"), licensee of WPMX(FM), Statesboro, Georgia. The MSC Counterproposal is fatally flawed and should be dismissed.

I. The MSC Counterproposal Violates FCC Allotment Rulemaking Cut-off Procedures.

The MSC Counterproposal violates well-established rules and procedures for comparative consideration of counter-proposals in FM rulemaking proceedings and wreaks havoc with the concept of administrative finality. It sweeps in two other rulemaking proceedings (MM Docket Nos. 99-199 and 99-259) where the last dates for filing

No. of Copies rec'd 014
List ABCDE

counterproposals were July 19, 1999, and September 7, 1999, respectively. Because Lacom Communications Inc., licensee of WELT(FM), Swainsboro, Georgia, in MM Docket No. 99-199 (proposing, among other changes, substitution of Channel 252C3 for Channel 280C3 at Hawkinsville, Georgia), timely proposed modification of WELT's license and amendment of the FM Table of Allotments to specify operation on Channel 251A at East Dublin, Georgia, that proposal was also a timely counterproposal in MM Docket No. 99-259, in which the FCC had proposed addition of Channel 253A to the Table of Allotments at Soperton, Georgia. Those other proceedings are entwined in the MSC Counterproposal because of MSC's suggestion that Channel 276C3 should be allotted to East Dublin rather than 251C3.

Section 1.420(d) of the Rules states that "Counterproposals shall be advanced in initial comments only" The Appendix to every FCC Notice of Proposed Rulemaking to amend the Table of Allotments further provides that "Counterproposals advanced in this proceeding will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments." In other words, the last date for advancing the allotment of Channel 276C3 at East Dublin was September 7, 1999, the deadline for comments and counterproposals in MM Docket No. 99-259. MSC implicitly suggests that the FCC should waive its cut-off rules and proceedings by claiming (*Counterproposal*, p. 2) that this substitution "allows for the resolution of two existing . . . proceedings." This so-called resolution, however, is achieved only by creating a new conflict with the proceeding initiated by Bullie's petition and altering the public interest considerations in the two earlier proceedings. This is

enough to justify issuance of a Further Notice of Proposed Rulemaking, to explore the relative equivalency of the proposed 251C3 and 276C3 allotments at East Dublin, among other matters.

Of at least equal importance, if the FCC were to permit the filing of untimely, imperfect "resolutions," there is no limit to the number of proceedings that are potentially ensnared. For example, the FCC recently released a Notice of Proposed Rulemaking in MM Docket No. 00-56, DA No. 00-647, released March 24, 2000, to assign Channel 221A as a second local service at Eastman, Georgia. Comments -- and counterproposals -- are due May 15, 2000. If parties to rulemaking proceedings could, long after the comment/counterproposal deadline, file counterproposals in any other proceeding, so long as they could be characterized as a "resolution," Bullie could, hypothetically, file a counterproposal in the Eastman proceeding that, by proposing modification of Bullie's WHVL(FM), Hinesville, Georgia, to operate on Channel 284A at Pulaski, Georgia, and use the channel proposed to be allotted to Eastman and perhaps other changes in the various proposals to duplicate the service proposals in the MSC Counterproposal and "resolve" Dockets 99-199, 99-229 and 00-18, all at the expense of Eastman. There would be no point at which the FCC could reliably claim to have achieved administrative finality.

II. The License of WDMG-FM, Douglas, Georgia, Can Not be Modified Without Its Consent.

The FCC may not modify a station's community of license without its consent. FCC policy further requires any proposal to modify an existing station's license to include an undertaking to reimburse the licensee for its reasonable expenses incurred in conforming

its operation to the modification. This is of particular importance where the modification requires a change of transmitter site. In its Petition for Rule Making, Bullie proposed modification of the license of WDMG-FM, Douglas, Georgia, to specify operation on Channel 258C1 at Willacoochee, Georgia. Bullie further showed that the licensee of WDMG-FM, Jumbo Thing, Inc., consented to the proposed re-allotment and modification and promised that it would reimburse Jumbo Thing, Inc., for expenses incurred in modifying the license, including construction of a maximum facilities Class C1 station at a new site serving Willacoochee. Based on Jumbo Thing's consent and Bullie's undertaking, the *NPRM* in this proceeding did not include an Order to Jumbo Thing to show cause why its license should not be modified. Bullie reiterated its undertaking to reimburse Jumbo Thing in its Comments, filed March 23, 2000. This undertaking by Bullie is no small thing. The cost of acquiring land, erecting a nearly 1,000-foot tower and constructing other facilities for WDMG-FM to serve Willacoochee is estimated to be in excess of \$300,000. (See the Declaration of James Hoffman, Vice President of Bullie, Attachment A hereto.)¹

The MSC Counterproposal, however, is made without Jumbo Thing's consent *and* does not include any commitment to reimburse Jumbo Thing for the expenses of the proposed reassignment of WDMG-FM. (Instead, MSC simply "supports" the reassignment of Channel 258C1 from Douglas to Willacoochee. *Counterproposal*, pp. 1-2.) In Attachment B, Jumbo Thing President Raymond Firment states that "Jumbo Thing would

¹ See *Columbus, Nebraska*, 51 FR 4926, February 10, 1986, suggesting possible requirement that a licensee demonstrate its financial ability to affected stations.

not relocate WDMG-FM at its own expense and, in the absence of an agreement for reimbursement opposes any modification of the WDMG-FM license.”² MSC, therefore, is proposing the *involuntary* relocation of WDMG-FM to a new community, at a new location. And that sort of proposal is flatly barred by FCC precedent.

In Brookville and Punxatawney, Pennsylvania, 65 P&F R.R.2d 493 (Mass Med. Bur. 1988), a party filed a “competing expression of interest” in a new FM allotment that had been proposed as an upgrade for an existing station and required the modification of the license of a second station. Although the petitioner had stated its willingness to reimburse the other licensee for the costs of the modification, the party who filed the “competing expression of interest” failed to make a similar statement. The FCC solicited additional information, to ascertain whether the filer of the competing interest was similarly willing to bear the cost of reimbursement. For future cases, however, the FCC outlined a new policy which still controls the present case:

To avoid this type of delay in future proceedings, we are taking this opportunity to state our policy concerning the content of competing expressions of interest. . . . [W]here, as here, the allotment of a channel requires an existing station to modify its operation by specifying a new channel, it is well established Commission policy that licensees or permittees required to change channels so as to allow a new allotment elsewhere are entitled to reimbursement. Therefore, parties filing competing expressions of interest in cases that require channel changes by existing licensees to accommodate the new allotment are also required to state an intention to reimburse the affected parties. *The absence of such a statement*

² Bullie’s commitment to reimburse Jumbo Thing’s expenses, of course, is contingent on implementation of Bullie’s proposed modification of WBAW-FM to specify operation on Channel 257C1 at Pembroke, Georgia. That move would be precluded by MSC’s counterproposal. So there is no basis for MSC or the FCC to infer that Bullie or anyone else is going to bear the expense of the WDMG-FM relocation if the MSC counterproposal were to be granted.

will render the expression of interest invalid. These policies will apply to all proceedings where the Notice of Proposed Rulemaking is adopted after the adoption of this *Report and Order*.

65 P&F R.R.2d 493 at 495. (Emphasis added.)

Brookville, and the cases following *Brookville* (e.g., *Walla Walla, WA*, and *Hermiston, OR*, 12 FCC Rcd 21774 (Mass Med. Bur. 1997)), therefore, require the dismissal of MSC's Counterproposal. *Cf.*, *Dyersburg, Tennessee, etc.*, 4 FCC Rcd 4814 (Mass Med. Bur. 1989), ¶ 8 ("MSB's counterproposal . . . is unacceptable for further consideration. . . . Commission policy strongly disfavors forced transmitter site moves, absent countervailing public interest benefits more compelling than those presented here. Therefore, we will not consider an alternative channel at Hoxie which requires the relocation of the station's transmitter site"); *Claremore, OK, etc.*, 3 FCC Rcd 4037 (Mass Med. Bur. 1982); *Hazlehurst, Utica and Vicksburg, MS*, 11 FCC Rcd 2353 (Mass Med. Bur. 1996).

The reallocation of Channel 258C1 from Douglas to Willacoochee is the linchpin of the MSC Counterproposal. Without the reallocation, MSC could not change the allotment of WPMX(FM), Statesboro, Georgia, from Channel 275C3 to Channel 257C3, which is a prerequisite of both the substitution of Channel 276C3 for Channel 251C3 as a proposed allotment at East Dublin and the allotment of Channel 275A at Pulaski. And the East Dublin substitution is a prerequisite for the "resolution" of both MM Dockets 99-199 and 99-259 and the new allotment of Channel 251A (currently allotted to Swainsboro) to Twin City. In other words, unless the FCC allows MSC to hijack Bullie's proposal to modify WDMG-FM from Douglas to Willacoochee, without the consent of the licensee and without

stating its commitment to bear the expenses of the relocation, none of the proposed reallocations, substitutions and new allotments in the MSC Counterproposal is feasible. (Moreover, because MSC's Counterproposal was required to be complete by the Comment deadline, it cannot be resuscitated by a Johnny-come-lately commitment filed after the deadline as an afterthought.³)

III. The Alleged Public Interest Benefits of MSC's Counterproposal Are Illusory.

When all is said and done, little if any benefit to the public interest would accrue from granting the MSC Counterproposal. As shown in Attachment C, the engineering statement of Bullie's consulting engineer, William A. Culpepper, any proposal which would move Channel 251A from Swainsboro, without a replacement channel, will result in the creation of underserved areas and populations (847 persons would receive two full-time services instead of three; 1,221 persons would receive three services instead of four; 2,2241 persons would be limited to four services instead of five).

Pulaski, where MSC seeks credit for providing a first local transmission service, is in fact not a community in need of a local FM station. Pulaski has a population of only 264 persons. According to Census Bureau statistics, of those 264 people, only ten actually work in Pulaski. Attachment A shows that Pulaski has no businesses to speak of and no civic organizations. MSC's own exhibits show that Pulaski's newspaper is published in another community and the nearest Chamber of Commerce is in another community.

³ See *Hondo, Hollywood Park and Dilley, Texas*, 13 FCC Rcd 234 (Mass Med. Bur. 1998) (counterproposal that was "defective on the date it was filed . . . was properly dismissed without consideration").

Although nominally incorporated, the Town of Pulaski does not even meet the standards set by Georgia law for incorporation. Georgia Code § 36-30-7.1G requires an “active municipality” to provide “at least three” services, either directly or by contract, from a list including law enforcement, fire protection, road and street construction or maintenance, solid waste management, water supply or distribution, waste-water treatment, storm-water collection and disposal; electric or gas utility services, enforcement of building codes, planning and zoning and recreational facilities. Pulaski provides only water service. The only credit MSC should receive for proposing a first service to Pulaski is for wasting valuable spectrum.⁴

If the FCC wanted to provide a first local service to East Dublin, it could do so by assigning Channel 276A to that community, without necessitating any change in the Table of Allotments at Statesboro.⁵

Given that Pulaski is not entitled to a new FM channel allotment, the essential differences between Bullie’s proposal and MSC’s Counterproposal are that (1) Bullie would provide a first local, wide-area service to Pembroke, in contrast to Twin City; (2) MSC would provide a Class C3 service at East Dublin instead of a Class A service. All of the area that would be served by the Twin City station is within the coverage area of Bullie’s proposed Class C1 station at Pembroke. And, as shown in Figure 4 of Mr. Culpepper’s

⁴ Mr. Culpepper also shows that only 48 people would receive a fifth full-time service if the Pulaski proposal is adopted.

⁵ If Lacom would not accept modification of its license for WELT(FM) to operate on Channel 276A at East Dublin, Bullie would file an application for a construction permit on Channel 276A and, if the application was granted, build the station.

engineering statement, the difference between a Class A station at East Dublin and Class C3 station is only slightly more than 20,000 persons. Given that Bullie's proposed reallocation of Channel 257C1 from Barnwell, South Carolina, to Pembroke, Georgia, would create a net service gain of 401,993 (*Comments of Bullie Broadcasting Corp.*, March 23, 2000, Culpepper Engineering Statement, Figure 4), the overall superiority of Bullie's proposal, particularly taking into account the possible allotment of a new Class A service at East Dublin, is manifest.

CONCLUSION

For the reasons stated in Parts I and II, above, the FCC should dismiss the MSC Counterproposal without further consideration. If it does not, it should grant Bullie's proposal, as modified herein.

Respectfully submitted,

BULLIE BROADCASTING
CORPORATION

By 

J. Geoffrey Bentley

J. Geoffrey Bentley, P.C.
BENTLEY LAW OFFICE
P.O. Box 710207
Herndon, Virginia 20171
(703)793-5207
(703)793-4978 (fax)

Its Attorney

April 7, 2000

DECLARATION UNDER PENALTY OF PERJURY

James Hoffman, under penalty of perjury of the laws of the United States, hereby declares:

1. I am Vice President of Bullie Broadcasting Corp., licensee of WBAW-FM, Barnwell, South Carolina, and permittee of WHVL(FM), Hinesville, Georgia.

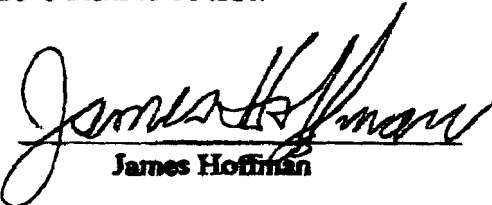
2. In connection with the proposed modification of the license of WBAW-FM to Channel 257C1 at Pembroke, Georgia, Bullie Broadcasting Corporation has agreed with Mr. Raymond Firment, President of Jumbo Thing, Inc., licensee of WDMG-FM, Channel 258C1, Douglas, Georgia, and has represented to the FCC, that it will reimburse Jumbo Thing for the expenses incurred in relocating WDMG-FM from Douglas to Willacoochee, Georgia, including construction of maximum Class C1 facilities at a new transmitter location to serve Willacoochee.

3. Based on my experience with the construction of WHVL(FM) and conversations with vendors, I estimate that the cost of relocating WDMG-FM will be in excess of \$300,000. The lowest estimate I received from any tower manufacturer for a tower of in excess of 1,030 feet (to accomodate a full Class C1 facility) was over \$220,000, not including foundations, guy wires, etc..

4. Over the past week, I have personally visited Pulaski, Georgia, and nearby communities, and spoken with Ms. Terry Franklin, Pulaski's Town Clerk, and others in Pulaski. In a conversation with Ms. Franklin on Thursday, April 6, 2000, she informed me that the only municipal service provided by the Town of Pulaski is the town water system. The Town levies no taxes; its only source of income is from water bills. It does not provide police or fire service, recreation, or any other services; neither does it contract for such services with any other jurisdiction. If a resident of Pulaski needs to call a police department, he/she must call the Candler County Sheriff's Department in Metter, Georgia. If there is a fire, the responding fire department is in Register, Georgia.

5. The only businesses in Pulaski are a convenience store and a nursing home. There are no libraries, no schools, no doctors' offices. I did not see any There are no civic organizations in Pulaski.

The facts stated herein are true, complete and correct of my personal knowledge, except those which are supported by other sources or of which official notice may be taken, or where stated to be on information and belief, and as to those facts I believe them to be true.



James Hoffman

April 7, 2000

Attachment B

99.5 860 WDMG

DOUGLAS
'THE MIGHTY GEORGIAN'

April 5, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
Washington, D.C. 20554

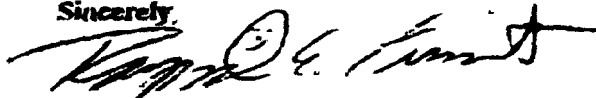
Re: MM Docket No. 00-18 (Dawson, SC;
Pembroke, GA; Douglas, GA; Willacoochee,
GA)

Dear Ms. Salas:

Jumbo Thing, Inc., is the licensee of WDMG-FM, Douglas, Georgia. In the FCC's *Notice of Proposed Rulemaking* in the above-referenced docket, it is proposed to modify the license of WDMG-FM to specify Willacoochee as its community of license. Jumbo Thing has agreed to this proposal because Bullis Broadcasting Corporation, the petitioner, has agreed and specifically represented to the FCC in its Petition for Rulemaking and Comments that it will reimburse Jumbo Thing for all of the costs reasonably incurred in changing the community of license and constructing new Class C1 maximum facilities at a new transmitter location to serve Willacoochee.

It has come to my attention that a Counterproposal by Multi-Service Corp. also proposes to modify the WDMG-FM license but includes no expression of intent, let alone a commitment, to reimburse Jumbo Thing for the costs it would incur in such a relocation. No copy of that Counterproposal was served on Jumbo Thing. This is to inform the FCC that Jumbo Thing would not relocate WDMG-FM at its own expense and, in the absence of an agreement for reimbursement, opposes any modification of the WDMG-FM license.

Sincerely,



Raymond Firmant
President, Jumbo Thing, Inc.

620 EAST WARD STREET

(912) 389-0995

FX (912) 383-8552

DOUGLAS, GEORGIA 3153

A Jumbo Thing Corporation

Attachment C

BULLIE BROADCASTING CORPORATION

BARNWELL, SC; PEMBROKE, GA; DOUGLAS, GA; WILLACOOCHEE, GA

ENGINEERING EXHIBIT

April 2000

**William Culpepper & Associates
900 Jefferson Drive
Charlotte, NC 28270**

BULLIE BROADCASTING CORPORATION

BARNWELL, SC; PEMBROKE, GA; DOUGLAS, GA; WILLACOOCHEE, GA

TABLE OF CONTENTS

	<u>PAGE</u>	<u>FIGURE</u>
DECLARATION	1	
NARRATIVE	2,3	
CHANNEL STUDY FOR CHANNEL 276A AT EAST DUBLIN	4	
MAP OF EXISTING SERVICES INSIDE THE PRESENT WJAT-FM (FORMERLY WELT) 60 dBu CONTOUR		1
MAP OF UNDER-SERVED AREA RECEIVING SERVICE FROM MULTI-SERVICE CORP. PROPOSED CLASS A FACILITY AT PULASKI AND BULLIE CLASS C1 FACILITY AT PEMBROKE		2
MAP OF PROPOSED EAST DUBLIN CHANNEL 276A 70 dBu CONTOUR AND TOWN BOUNDARY		3

BULLIE BROADCASTING CORPORATION

BARNWELL, SC; PEMBROKE, GA; DOUGLAS, GA; WILLACOOCHEE, GA

DECLARATION

I declare, under penalty of perjury, that I have prepared the attached Engineering Exhibit for Bullie Broadcasting Corporation, and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief; and that I am a Registered Professional Engineer in the State of Georgia.

Executed on April 7, 2000.

A handwritten signature in cursive script, reading "William A. Culpepper", is written over a horizontal line.

William A. Culpepper

William Culpepper & Associates
900 Jefferson Drive
Charlotte, NC 28270
704-365-9995

BULLIE BROADCASTING CORPORATION

BARNWELL, SC, PEMBROKE, GA, DOUGLAS, GA AND WILLACOOCHIEE, GA

NARRATIVE

This exhibit has been prepared in support of the attached Reply Comments of Bullie Broadcasting Corporation and Opposition to Counterproposal. The purpose is to respond to Comments and Counterproposal of Multi-Service Corp. and a Proposal of Lacom/WELT.

SWAINSBORO - EAST DUBLIN

Figure 1 is a map showing 60 dBu contours of WELT (now WJAT-FM), channel 251A, Swainsboro, Georgia and other area FM broadcast stations. (The WELT/WJAT-FM contour is shown with a dashed line.) The nighttime interference-free contours of WJAT-AM (21.5 mV/m) and WXRS-AM (13.6 mV/m) are also shown. Deletion of Channel 251A from Swainsboro would remove the number of Full-Time Aural Services from the county subdivisions of Swainsboro, Summertown and Kite as follows:

Reduction from 3 services to 2 services

847 persons, 146 square kilometers

Reduction from 4 services to 3 services

1221 persons, 249 square kilometers

Reduction from 5 services to 4 services

2241 persons, 60 square kilometers

Page 3 is a channel study that shows that channel 276A can be allotted to East Dublin with a site restriction of approximately three kilometers west southwest of the city. Figure 3 is a map that demonstrates that a facility at the reference point can easily place a 70 dBu signal over all of East Dublin.

PULASKI, GEORGIA

Figure 2 is a map showing the 60 dBu contour of a class A facility located at Pulaski, Georgia. This facility would provide a 60 dBu signal to 4.5 square kilometers of the Portal county subdivision and 5.7 square kilometers of the South Ogeechee subdivision. This would provide a fifth full-time aural service to a total of 48 people. The Pulaski proposal would provide service to no other under-served area.

BULLIE BROADCASTING CORPORATION

BARNWELL, SC, PEMBROKE, GA, DOUGLAS, GA AND WILLACOOCHEE, GA

NARRATIVE...(continued)

The site used in Figure 2 is located at the town of Pulaski (north 32° 23' 24" and west 81° 57' 25"). In its counterproposal, Multi-Service Corp. used the site of its owned station, WPMX, as the Pulaski reference point.

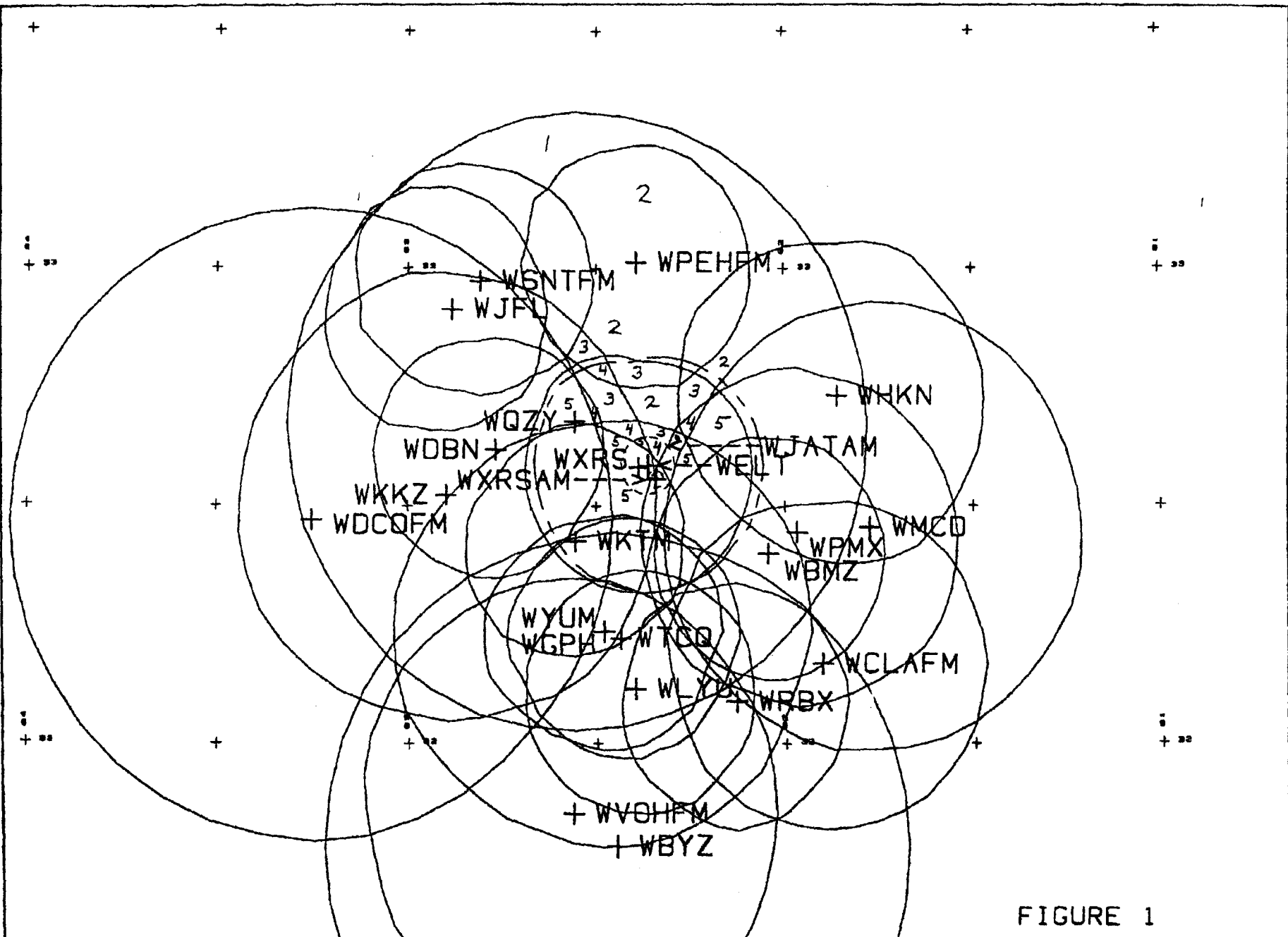
It is shown on Figure 2 that the 60 dBu contour of the Bullie Broadcasting proposal for Pembroke, Georgia completely encompasses the 60 dBu contour of the Pulaski proposal.

WILLIAM CULPEPPER & ASSOCIATES
900 JEFFERSON DRIVE CHARLOTTE NC

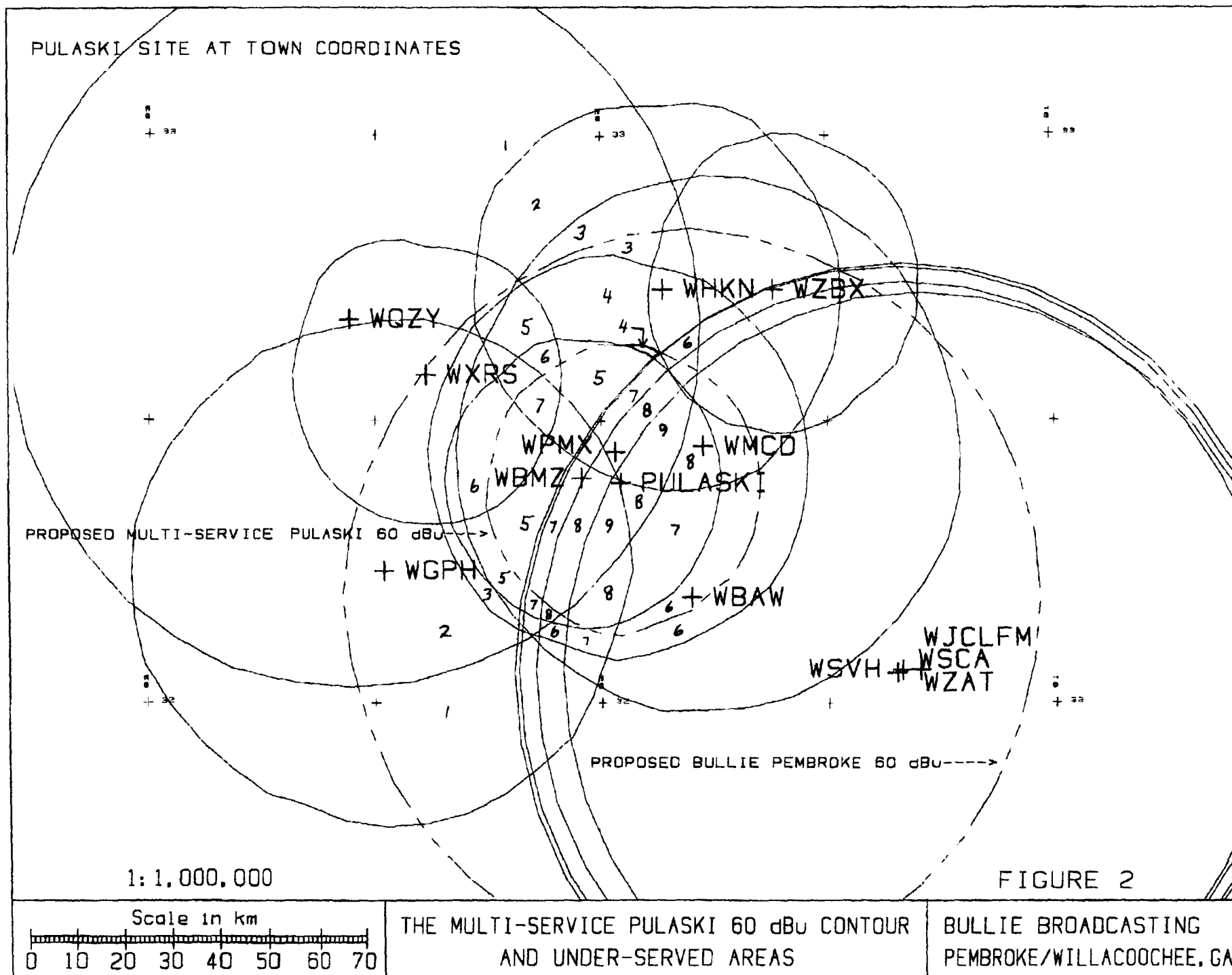
CHANNEL STUDY FOR BULLIE BROADCASTING
PROPOSED CH 276A AT EAST DUBLIN

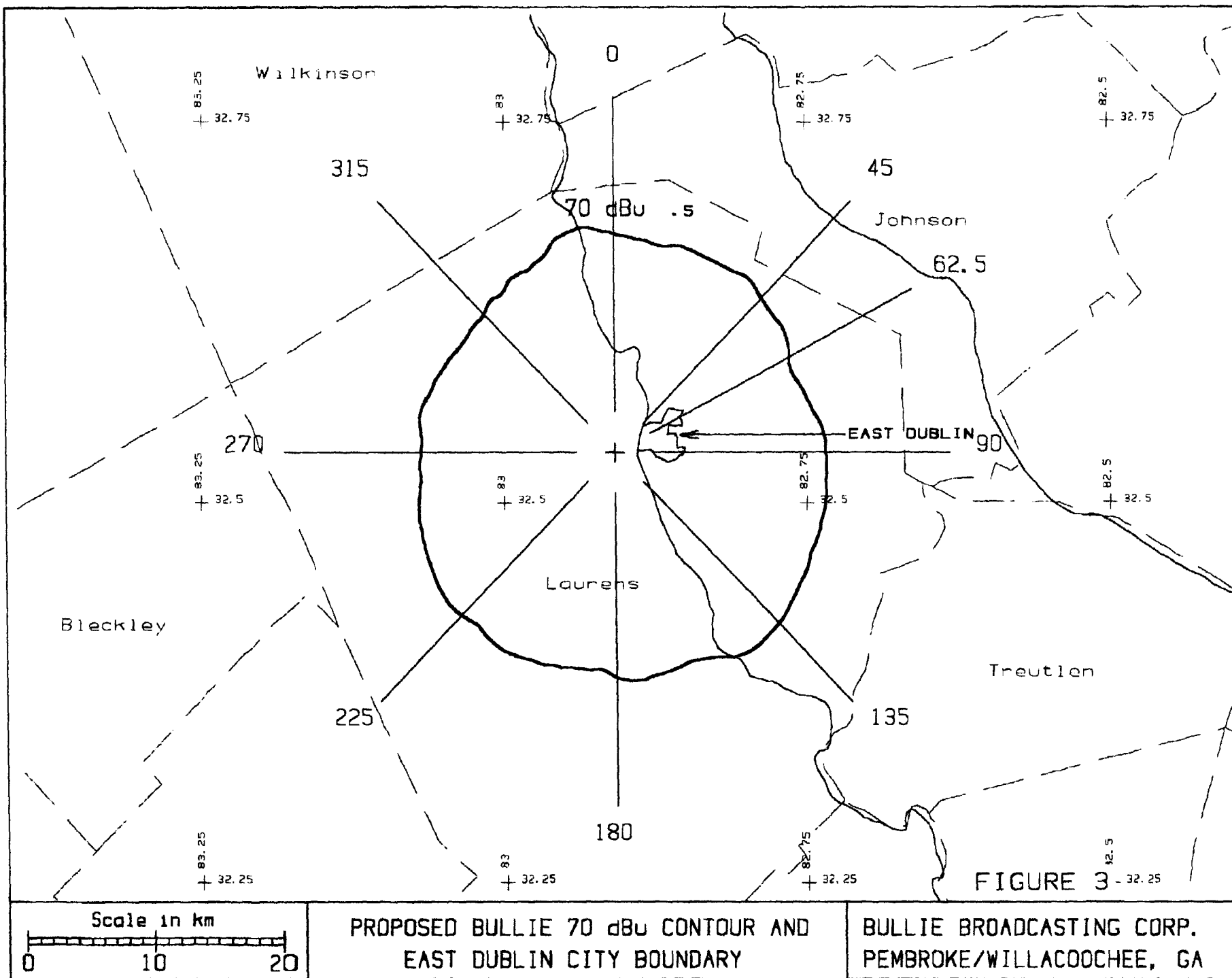
REFERENCE		CLASS A	DISPLAY DATES
32 32 00 N			DATA 04-04-00
82 54 30 W		Current rules spacings	SEARCH 04-07-00
----- CHANNEL 276 -103.1 MHz -----			

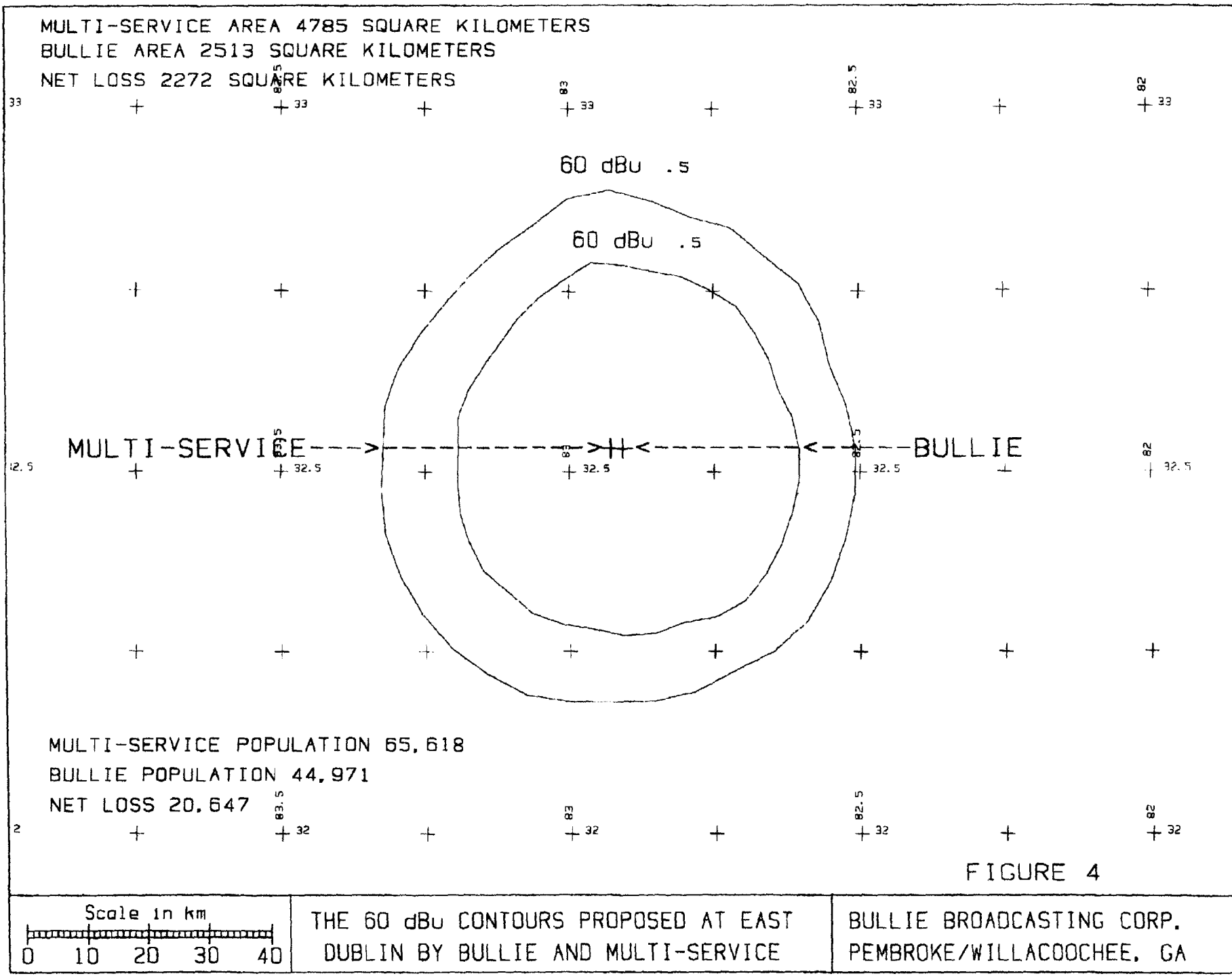
CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN	
RADD	276C3	East Dublin	GA	268.1	1.85	141.5	-139.65	*
WPMX	275C3	Statesboro	GA	96.3	88.86	88.5	0.36	<
RDEL	275C3	Statesboro	GA	96.3	88.86	88.5	0.36	<
WWSN	277C	Waycross	GA	149.9	176.57	164.5	12.07	
WVRK	275C	Columbus	GA	262.5	177.51	164.5	13.01	
WVKX.C	279A	Irwinton	GA	326.0	46.39	30.5	15.89	
WVKX	279A	Irwinton	GA	326.0	46.39	30.5	15.89	
RADD	275A	Pulaski	GA	96.3	88.86	71.5	17.36	
WYSC	274A	Mcrae	GA	175.6	52.98	30.5	22.48	
WVEE	277C	Atlanta	GA	315.6	190.33	164.5	25.83	
WFXAFM	276A	Augusta	GA	40.3	140.63	114.5	26.13	
WLCGFM	273A	Warner Robins	GA	273.4	71.69	30.5	41.19	
WGZO.C	276C3	Parris Island	SC	93.3	186.92	141.5	45.42	



<p>Scale in km</p> <p>0 10 20 30 40 50 60 70</p>	<p>EXISTING SERVICES INSIDE THE PRESENT WELT 60 dBu CONTOUR</p>	<p>BULLIE BROADCASTING CORP. PEMBROKE, GEORGIA</p>
--	---	--







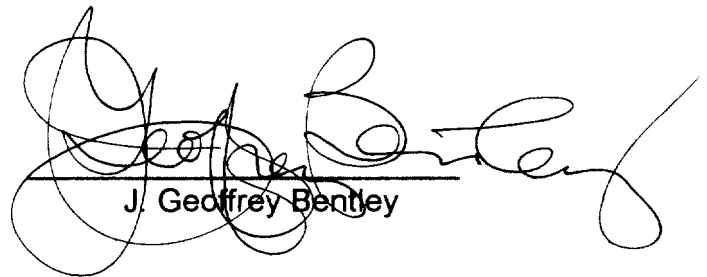
CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Reply Comments of Bullie Broadcasting Corporation and Opposition to Counterproposal to be served this 7th day of April 2000, by U.S. mail, postage prepaid, on the following:

Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Ave., N.W., Suite 307
Washington, D.C. 20016

Law Offices of Lawrence J. Bernard, Jr.
524 Chevy Chase Parkway, N.W.
Washington, D.C. 20015



J. Geoffrey Bentley